

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6541  
PETITION OF JESSE J. BUFF**

OPINION OF THE BOARD  
(Hearing Held: December 6, 2017)  
(Effective Date of Opinion: December 13, 2017)

Case No. A-6541 is an application by Jesse J. Buff (the "Petitioner") for four variances. The Petitioner is seeking to construct a second floor addition on top of an existing structure.

The existing structure requires a variance of one (1) foot as it is within twenty-four (24) feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.2 of the Zoning Ordinance. In addition, the existing structure requires a variance of seven (7) feet as it is within zero feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.2.

The proposed second floor addition, which will be placed on top of the existing structure, also requires a variance of one (1) foot as it is within twenty-four (24) feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of seven (7) feet as it is within zero feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59-4.4.9.2.

The Board of Appeals held a hearing on the application on Wednesday, December 6, 2017. Petitioner Jesse J. Buff appeared pro se at the hearing with Eric Saul of Saul Architects.

Decision of the Board:                      Variances **GRANTED**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 15, Block A, Sligo Heights-Enoch Maris Addition Subdivision, located at 7501 Flower Avenue, Takoma Park, MD, 20912, in the R-60 Zone. It is a regular, rectangular corner lot that abuts Flower Avenue on its west side, and Davis

Avenue on its south side. It is 6,359 square feet in size. See Exhibits 3, 4(a) and (b), and 7.

2. Per the Justification Statement, the subject property contains an existing house which extends approximately one (1) foot into the front setback on its south side, and is "located within the 7' side setback to the north property line (actual building sits on the property line)." The Petitioner is seeking variance relief for both the existing structure, and for a proposed second story addition would which be placed on top of the one-story portion of the existing structure, "matching the existing building footprint." See Exhibits 3, 6(a) and (b), and 9(a) and (b).

3. The Justification indicates that "[t]he original house was built in 1923 and its northern extent sits on the north property line, within the 7' side setback and its southern extent site 1' within the 25' front setback. Two one-story additions were built to the rear of the original house sometime in the 20<sup>th</sup> century. They follow the same north extent, and south extent as the original house." See Exhibit 3.

4. The Justification Statement describes the proposed construction as follows:

Petitioner is seeking a variance for the rear addition under the Montgomery County Zoning Code Section 59-4.4.9.B.2. Petitioner proposed to construct the addition on top of the existing one-story structure, which sits on the existing north property line within the 7' side setback and within the 25' front setback to the south, matching the existing building footprint. The lot is 50' wide and the existing house sits 24' from the south property line, which has a 25' setback. Due to this irregular placement, the only practical and least disruptive addition would be building on top of the existing one-story structure.

The subject rear lot line is the side yard lot line for the adjacent neighbor. The existing structure upon which it is proposed to build a second story sits 32' from the rear lot line. Therefore, the addition will not negatively affect the open feel of the neighbor's rear yard. For the reasons stated above, Petitioner is seeking to allow the construction of the 2<sup>nd</sup> floor addition within these setbacks.

See Exhibit 3.

5. The Justification Statement describes the uniqueness of the property, and the practical difficulties imposed by the application of the Zoning Ordinance to the property, as follows:

The lot size is 6,359 sf and is a corner lot so has two 25' front yard setbacks. After subtracting the non-buildable area due to setbacks, the actual buildable square footage of the lot is only 1,198.5 sf (18.8% of the total lot). For comparison sake, a standard 6000 sf lot in the R-60 zone (60' x 100') would have a net buildable area of 2,530 sf (42.2% of the lot) after factoring in setbacks. The subject lot has less than half of the buildable area compared to surrounding lots. The R-60 zone

allows 35% lot coverage, a number impossible to reach with the existing constraints.

The lot is 50' wide, but the actual buildable envelope is 18' after subtracting the side setback to the north and the front setback to the south.

It refers to the resultant buildable envelope as a "narrow sliver." See Exhibit 3.

6. The Justification Statement asserts that the original house, which was built in 1923 and is located in the front and side setbacks, is an existing legal nonconforming structure. The rear of the house has two one-story additions which were constructed sometime in the 20<sup>th</sup> century, but before the Petitioner purchased the subject property in 2006. These additions follow the north extent and south extent of the original house, and thus are also in the front and side setbacks. The Petitioner is not responsible for the placement of the original house or the additions within the setbacks. See Exhibit 3.

7. The Justification Statement states that it would be impractical to construct an addition within the allowable buildable envelope, and that the existing house is situated on the lot in such a way as to eliminate the "opportunity to match what so many neighbors have been able to do, which is to efficiently construct a proper addition to reach at least three bedrooms." The Justification Statement goes on to note that "[t]here are only two bedrooms in the house. Most houses have constructed large two story additions on the rear of their homes. The Petitioner is requesting a much smaller, single-story addition to construct a master suite within the existing building footprint. Also, as stated previously, the actual buildable area of the subject lot is about half of what the neighboring lots have." See Exhibit 3.

8. Finally, the Justification Statement asserts that the proposed construction will maintain the existing footprint of the house, and thus will not adversely impact abutting or confronting properties. It further asserts that the proposed addition will preserve the residential character of the neighborhood, consistent with the Takoma Park Master Plan. See Exhibit 3.

9. At the hearing, the Petitioner testified that he and his family have lived in their two-bedroom home for eleven years, and that they would like expand their house to add a third bedroom, as so many of their neighbors have done. He testified that the addition would be directly over an existing one-story addition which was built prior to their purchase of the home. When asked about the impact of the proposed addition on his next door neighbors, the Petitioner testified that the neighbors' driveway is on that side of their house, that the proposed addition would match the profile of his existing house and of the neighbors' house, and that it would not change their view.

## **FINDINGS OF THE BOARD**

Based on the Petitioner's binding testimony, and based on the evidence of record, the Board finds that the requested variances can be granted. The requested variances

comply with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

Based on the Justification Statement, the Board finds that the subject property has a markedly small and narrow buildable envelope in terms of width, available square footage, and when viewed as a percentage of the lot as a whole. See Exhibit 3. The Board finds that this unusually constrained buildable area constitutes an extraordinary condition that is peculiar to this property, and satisfies Section 59-7.3.2.E.2.a.i of the Zoning Ordinance. See Exhibit 4(a).

*Section 59-7.3.2.E.2.a.ii. - the proposed development uses an existing legal nonconforming property or structure;*

The Board finds that the proposed development uses an existing structure which was built in 1923 and extends approximately 1.0 foot into the front setback on the south side of the property, and seven feet into the side setback on the north side of the property, literally sitting on the north (side) lot line. The original house was built before the enactment of Montgomery County's first Zoning Ordinance. Thus the Board finds that the Petitioner's home does not comply with the front and side lot line setbacks required by the Montgomery County Zoning Ordinance, and is nonconforming. Accordingly, the Board finds that the application satisfies Section 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the original house was built on the subject property in its current location in 1923, that the additions were built in the 20<sup>th</sup> century, and that the Petitioner did not purchase this property until 2006. Thus the Board finds that the Petitioner took no actions to create the special circumstances or conditions peculiar to this property.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the testimony of the Petitioner and on the Justification Statement in the record at Exhibit 3, that the requested variances are the minimum necessary to allow the proposed construction to proceed. The Board finds that the requested variances are minimal in that they would allow the construction of a second-story addition directly over an existing home, and would not increase the footprint of the

existing house or extend any further into the setbacks than the original house has encroached since it was built in 1923. The Board further finds that without the grant of the variances for the existing home, the Petitioner could not expand this two-bedroom house as has been done to other homes in the neighborhood, and that without the grant of the requested variances for the proposed addition, any new construction would be severely limited by the property's unusually narrow (18') and small buildable envelope. Thus the Board concludes that the grant of the requested variances is the minimum necessary to allow construction over the existing structure and therefore to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the proposed construction will continue the residential use of this property, consistent with the recommendations of the Takoma Park Master Plan, which recommends "preserving the existing residential character, encouraging neighborhood reinvestment and enhancing the quality of life throughout Takoma Park."

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the record contains no opposition to the proposed construction, which again would continue the residential use of this home. In addition, the Board finds, per the Justification Statement, that the proposed addition will not enlarge the footprint of the existing house on this property, and will not encroach any further into the setbacks than the additional house already encroaches. The Board notes that per the Justification Statement, the proposed addition is modest compared with many of the two-story rear additions on many neighboring homes. Finally, the Board notes that the Petitioner testified, when asked about the impact of the proposed addition on his next door neighbors, that their driveway is on that side of their house, that the proposed addition would match the profile of his existing house and of his neighbors' house, and that it would not change their view. On the basis of the foregoing, the Board finds that the grant of the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances for the existing home and to allow the proposed construction of a second floor addition are **granted**, subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, with Edwin S. Rosado, Vice Chair, Stanley B. Boyd, and Katherine Freeman in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
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John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 13th day of December, 2017.

  
\_\_\_\_\_  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.